

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

---

MILTON J. R.,

Plaintiff,

Civil Action No.  
5:19-CV-0315 (DEP)

v.

ANDREW M. SAUL, Commissioner of Social  
Security,<sup>1</sup>

Defendant.

---

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

LEGAL AID SOCIETY OF MID-NEW  
YORK, INC.  
Syracuse Office  
221 South Warren Street, Suite 310  
Syracuse, NY 13202

ELIZABETH V. KRUPAR, ESQ.

---

<sup>1</sup> Plaintiff's complaint named Nancy A. Berryhill, in her capacity as the Acting Commissioner of Social Security, as the defendant. On June 4, 2019, Andrew Saul took office as Social Security Commissioner. He has therefore been substituted as the named defendant in this matter pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, and no further action is required in order to effectuate this change. See 42 U.S.C. § 405(g).

FOR DEFENDANT

HON. GRANT C. JAQUITH  
United States Attorney  
P.O. Box 7198  
100 S. Clinton Street  
Syracuse, NY 13261-7198

DANIEL TARABELLI, ESQ.  
Special Assistant U.S. Attorney

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.<sup>2</sup> Oral argument was heard in connection with those motions on June 3, 2020, during a telephone conference conducted on the record. At the close of argument I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and

---

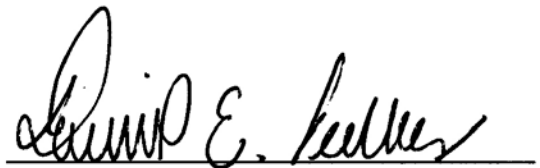
<sup>2</sup> This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

ORDERED, as follows:

- 1) Defendant's motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner's determination that the plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is AFFIRMED.
- 3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles  
U.S. Magistrate Judge

Dated: June 16, 2020  
Syracuse, NY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----x  
MILTON JOSE R.,

Plaintiff,

vs.

5:19-CV-315

ANDREW SAUL, Commissioner  
of Social Security,

Defendant.

-----x

*DECISION - June 3, 2020*

James Hanley Federal Building, Syracuse, New York

HONORABLE DAVID E. PEEBLES

United States Magistrate Judge, Presiding

APPEARANCES (by telephone)

For Plaintiff: LEGAL AID SOCIETY OF MID NEW YORK, INC.  
221 South Warren Street  
Syracuse, NY 13202  
BY: ELIZABETH V. KRUPAR, ESQ.

For Defendant: SOCIAL SECURITY ADMINISTRATION  
Office of the General Counsel  
15 Sudbury Street  
Boston, MA 02203  
BY: DANIEL STICE TARABELLI, ESQ.

*Eileen McDonough, RPR, CRR  
Official United States Court Reporter  
P.O. Box 7367  
Syracuse, New York 13261  
(315) 234-8546*

1           THE COURT: Thank you. Let me compliment both  
2 counsel on excellent written and verbal presentations. I  
3 enjoyed working with you and this presents an interesting  
4 case with several interesting issues.

5           Plaintiff commenced this proceeding pursuant to 42,  
6 United States Code, Sections 405(g) and 1383(c)(3) to  
7 challenge an adverse determination by the Commissioner of  
8 Social Security finding that plaintiff was not disabled at  
9 the relevant times and, therefore, ineligible for the  
10 benefits for which he applied. The background is as follows.

11           Plaintiff was born in November of 1980. He is  
12 currently 39 years of age. He was 33 years old at the time  
13 of the alleged onset of his disability in June of 2014.  
14 Plaintiff stands between 5-foot-4 and 5-foot-5 inches in  
15 height, and at various times has weighed between 177 and  
16 197 pounds.

17           Plaintiff has a ninth grade education which he  
18 achieved in Puerto Rico in Spanish. He does not speak or  
19 write or understand English. Plaintiff lives in a  
20 second-floor apartment with his wife and three children, who  
21 in September of 2017 were aged five, seven and eight. He  
22 resides in Syracuse, New York, where he moved from Puerto  
23 Rico in 2014.

24           Plaintiff testified he is ambidextrous during the  
25 hearing, although at various times he suggested in his

1 function report, for example, at Administrative Transcript  
2 332, that he is left-handed.

3 Plaintiff last worked before his move from Puerto  
4 Rico to New York in June of 2014. He was a production line  
5 worker at a mattress factory from either 2007 or 2008 until  
6 June of 2014. At page 344 of the Administrative Transcript  
7 he described that job as requiring lifting of 50 pounds  
8 frequently and up to 100 pounds occasionally and walking all  
9 day. Prior to that time plaintiff worked in a food warehouse  
10 from somewhere around 1999 until 2005 in two different  
11 positions, and as a stocker in a grocery store from  
12 October 2004 to August 2005. He also worked in plastic  
13 production in the late 1990s.

14 Plaintiff physically has a right foot impairment  
15 that stems from a motor vehicle accident. It is unclear  
16 precisely when the accident occurred, but it appears it was  
17 sometime in the 1999 to 2000 time frame. The injury has  
18 resulted in three surgeries. The last occurred in 2002 with  
19 inclusion of three screws and a fusion. Plaintiff has  
20 residual issues, including osteoarthritis and degenerative  
21 changes. An X-ray that was taken in October of 2014, among  
22 other things, reflected significant degenerative change  
23 junction between the midfoot and hindfoot, some mild to  
24 moderate degenerative change of the mid to forefoot  
25 articulations, and mild degenerative change first MTP joint.

1           The plaintiff also suffers from spurring and  
2 osteophytes. In addition, plaintiff has at various times  
3 complained of knee and ankle pain, left shoulder pain, lumbar  
4 back pain, hyperlipidemia, obesity, hypertension, a history  
5 of epilepsy, and obstructive sleep apnea.

6           Testing of plaintiff's spine in March of 2017  
7 reflected degenerative changes of the lower lumbar facet  
8 joints. That's at page 541 of the Administrative Transcript.  
9 Plaintiff has been prescribed and uses a cane to ambulate,  
10 although medical records do not reflect that he consistently  
11 used it early on. Plaintiff has been prescribed various  
12 medications over time, including hydrocodone, oxycodone,  
13 Gabapentin, Cymbalta, Dilantin, Mobic, Baclofen, Lidocaine  
14 Patch, Depakote, Percocet, Topamax, Celebrex, and Tramadol.

15           Plaintiff has a significant range of activities of  
16 daily living, according to his hearing testimony and Exhibit  
17 3E. He can shower, dress, make his bed, wash dishes, cook  
18 some. He drives, shops, watches his children, watches  
19 television, attends school activities, and listens to the  
20 radio. The plaintiff also smokes cigarettes. That's at  
21 page 473 of the Administrative Transcript.

22           Procedurally, plaintiff filed applications for  
23 Title II and Title XVI benefits under the Social Security Act  
24 on August 26, 2014, alleging an onset date of June 27, 2014.  
25 Interestingly, plaintiff made a previous application for

1 disability benefits in 2007, as reflected at page 93 of the  
2 Administrative Transcript. That, of course, was prior to his  
3 work at the mattress factory through June of 2014.

4 In his pending application, plaintiff claimed  
5 disability based on epilepsy, right foot operation with three  
6 screws, extraction of right hip for foot fusion, arthritis,  
7 and acid reflux. That's at page 319. During the hearing  
8 plaintiff stated that he is unable to work due to his right  
9 foot, which limits his standing, his lower back, sleep  
10 deprivation, and epilepsy. That appears at page 75 and 76 of  
11 the Administrative Transcript.

12 A hearing was conducted on September 7, 2017 by  
13 Administrative Law Judge Bruce S. Fein with the assistance of  
14 an interpreter to address plaintiff's application for  
15 benefits. On September 25, 2017 ALJ Fein issued an adverse  
16 determination. That became a final determination of the  
17 Agency on September 20, 2018, when the Social Security  
18 Administration Appeals Council denied plaintiff's request for  
19 review.

20 This action was commenced on March 11, 2019. It is  
21 timely due to the fact that the Social Security  
22 Administration Appeals Council extended plaintiff's time to  
23 file suit.

24 In his decision ALJ Fein applied the familiar  
25 five-step test for determining disability. He first



1 determined that plaintiff's last date of insured status was  
2 December 31, 2019.

3 He then concluded that plaintiff had not engaged in  
4 substantial gainful activity since June 27, 2014, the date of  
5 his alleged onset of disability.

6 At step two ALJ Fein concluded that plaintiff  
7 suffers from severe impairments that impose more than minimal  
8 limitations on his ability to perform basic work functions,  
9 including a right foot impairment, status post multiple foot  
10 surgeries, degenerative joint disease in right foot, and  
11 obesity, rejecting the various other impairments that were  
12 alleged and noting his reasoning for doing so. He did note  
13 that certain of the impairments, although they were rejected  
14 as severe, were accounted for in the residual functional  
15 capacity finding.

16 At step three the Administrative Law Judge  
17 concluded that plaintiff's conditions do not meet or  
18 medically equal any of the listed presumptively disabling  
19 impairments and conditions, specifically considering listings  
20 1.02 and 1.03, as well as plaintiff's obesity.

21 The Administrative Law Judge concluded that,  
22 notwithstanding his impairments and conditions, plaintiff  
23 does retain the residual functional capacity to perform  
24 sedentary work, and stated specifically he is able to lift  
25 and/or carry 10 pounds frequently, sit for six hours in an

1 eight-hour day, and stand and/or walk for two hours in an  
2 eight-hour day with normal breaks. He went on to state that  
3 the claimant should never climb ladders, ropes, or scaffolds,  
4 or work at unprotected heights. He is able to occasionally  
5 climb stairs and ramps. He is able to squat, crouch, crawl,  
6 kneel, bend and/or stoop occasionally. He is able to  
7 occasionally operate foot controls. The claimant is able to  
8 reach and use his hands for fine and gross manipulations  
9 without limitation.

10 Applying that residual functional capacity finding,  
11 ALJ Fein concluded at step four that plaintiff is incapable  
12 of performing his past relevant work due to the exertional  
13 requirements associated with that work.

14 At step five the Administrative Law Judge noted  
15 that if plaintiff were capable of performing a full range of  
16 sedentary work, Medical/Vocational Guideline, or grid, Rule  
17 201.23 would direct a finding of no disability. Citing  
18 Social Security Ruling 96-9p, Administrative Law Judge Fein  
19 noted that occasional stooping, as set forth in the residual  
20 functional capacity, would not significantly erode the job  
21 base upon which the grids are based. Also noted that  
22 limitation on climbing and so forth would not similarly erode  
23 the job base. And, therefore, concluded that he was able to  
24 find that the Commissioner had carried his burden at step  
25 five through use of the grids without the requirement to

1 elicit testimony from a vocational expert.

2 As you know, the task that I must perform is  
3 extremely limited. I apply a highly deferential standard of  
4 review. I must determine whether correct legal principles  
5 were applied and the resulting determination is supported by  
6 substantial evidence.

7 In *Brault versus Social Security Administration*  
8 *Commissioner*, 683 F.3d 443, a decision from the Second  
9 Circuit Court of Appeals issued in 2012, the Court noted that  
10 the standard to be applied is rigid and more demanding than  
11 even the clearly erroneous standard. The Court went on to  
12 note that the substantial evidence standard means once an ALJ  
13 finds facts, those facts can be rejected only if a reasonable  
14 factfinder would have to conclude otherwise. Substantial  
15 evidence, of course, is defined as such relevant evidence as  
16 a reasonable mind might accept as adequate to support a  
17 conclusion.

18 In his challenge to the Commissioner's  
19 determination, plaintiff raises three basic contentions.

20 First, he contends that the opinions of two  
21 treating sources, Dr. Lemely and Dr. Triana, were improperly  
22 considered and not given full weight, and that the  
23 Administrative Law Judge failed to cite the appropriate  
24 factors in noting what weight was being given to those two  
25 opinions.

1           Secondly, he challenges the analysis of his  
2 subjective complaints, what we used to call the credibility  
3 analysis, under SSR 16-3p.

4           And third, he challenges the Administrative Law  
5 Judge's reliance on the grids in light of plaintiff's  
6 inability to communicate in English and suggests that the  
7 testimony of a vocational expert should have been elicited.

8           The first argument that I will address is the  
9 treating physician argument. Undeniably, both Dr. Ted  
10 Triana, DO, and Dr. Frederick Lemely, an orthopedic  
11 specialist, are treating sources. They both provided  
12 opinions which are more limited than the residual functional  
13 capacity found.

14           In one of his opinions from July 15, 2017,  
15 Dr. Triana noted that plaintiff can lift and carry less than  
16 10 pounds occasionally and less than 10 pounds frequently,  
17 walk and/or stand less than two hours in an eight-hour  
18 workday. He also concluded that plaintiff can sit less than  
19 six hours in an eight-hour workday, and can never climb,  
20 balance, kneel, crouch, or crawl. That opinion appears at  
21 pages 555 through 558 of the Administrative Transcript.

22           Dr. Triana also issued another opinion on  
23 employability, at pages 658 and 659, indicating severe  
24 limitations in the areas of walking, standing, sitting,  
25 lifting, carrying, pushing, pulling, bending, stairs or other

1 climbing.

2           The orthopedic specialist, Dr. Lemely, on July 28,  
3 2017 issued an opinion which appears at pages 560 and 562 of  
4 the Administrative Transcript, also indicating plaintiff  
5 cannot lift and/or carry more than 10 pounds occasionally or  
6 frequently, can stand less than two hours in an eight-hour  
7 workday, and must periodically alternate sitting and standing  
8 to relieve pain. I note that Dr. Lemely did, at page 540, on  
9 March 23, 2016 indicate that plaintiff is capable of  
10 performing sedentary work, although he went on to say, "In  
11 terms of labor intensive activity, I think he will have  
12 significant disability."

13           The opinions of those two are, of course, entitled  
14 to considerable deference, and if they are, of course,  
15 supported by medically acceptable clinical and laboratory  
16 diagnostic techniques and not inconsistent with other  
17 substantial evidence. They are not controlling, however, if  
18 they are contrary to other substantial evidence in the  
19 record, including opinions of other medical experts. Where  
20 the record includes contradictory medical evidence, the  
21 resolution is properly entrusted to the Commissioner.

22           Both the regulations and case law indicate that  
23 there are several factors that an Administrative Law Judge  
24 must consider if not giving controlling weight to a treating  
25 source's opinion. Those are the so-called *Burgess* Factors,

1 and include: The length of the treatment relationship and  
2 the frequency of examination; the nature and extent of the  
3 treatment relationship; the evidence supporting the treating  
4 provider's opinion; the degree of consistency between the  
5 opinion and the record as a whole; whether the opinion is  
6 given by a specialist; and other evidence that has been  
7 brought to the attention of the Administrative Law Judge.

8 I have reviewed the Administrative Law Judge's  
9 treatment of those two opinions. They, of course, are vastly  
10 different from the opinions given by the consultative  
11 examiner, Dr. Ganesh. Dr. Ganesh's findings are discussed at  
12 page 42 of the Administrative Transcript. Dr. Ganesh found  
13 very little limitations, which led the Administrative Law  
14 Judge to conclude that it would be given little weight  
15 because the plaintiff in the opinion of Administrative Law  
16 Judge Fein was more limited than Dr. Ganesh found.

17 Dr. Lemely's opinions are discussed at page 43  
18 through 44. The Administrative Law Judge explained why  
19 certain of the limitations set forth in Dr. Lemely's medical  
20 source statement were rejected. Dr. Triana's opinions were  
21 given little weight and there was an explanation given at  
22 page 44 extending over to the beginning of 45 for that  
23 treatment. Clearly, the Administrative Law Judge did not  
24 rotely discuss the *Burgess* factors factor by factor. I  
25 rarely see that, quite frankly. But as the Second Circuit

1 has noted in *Guerra versus Saul*, 778 F. Appx. 75, a  
2 memorandum-decision from October 4, 2019, that remand for  
3 traversing the treating physician's rule is not required  
4 where a searching review of the record shows that the  
5 Administrative Law Judge provided good reasons for his weight  
6 assessment.

7 In this case I believe that that is the case and  
8 that Administrative Law Judge Fein did explain why he did not  
9 accept the opinions of Dr. Triana and Dr. Lemely.  
10 Dr. Ganesh, of course, found in her medical source statement,  
11 at page 475, no limitations to sitting, standing, or the use  
12 of the upper extremities, mild degree of limitation walking  
13 and climbing. The examination reflected, the objective  
14 examination from Dr. Ganesh reflected very modest  
15 limitations.

16 So the medical source statements were accepted to  
17 the extent that plaintiff appears capable of performing  
18 sedentary work. And that appears at page 540 and 551 of the  
19 Administrative Transcript, as I just noted. The  
20 Administrative Law Judge also noted plaintiff's ability to  
21 perform heavy exertional work up to 2014 before moving out of  
22 Puerto Rico to New York. He did reject the limitations on  
23 climbing, balancing, kneeling, crouching and crawling. Even  
24 if that was error, it is harmless error because it is clear  
25 under SSR 96-9p that those are not required for sedentary

1 work.

2 In my opinion, the Administrative Law Judge  
3 provided good reasons and allows for meaningful judicial  
4 review of the treatment of those two treating physicians'  
5 opinions. The Administrative Law Judge also noted  
6 Dr. Lemely's opinion on standing and walking, at page 560,  
7 which he viewed as inconsistent with sedentary work. That's  
8 at page 43.

9 I think that Administrative Law Judge Fein could  
10 have been more explicit in discussing his reasons for  
11 rejecting the stand and walk limitations, but when read as a  
12 whole, I believe the opinion gives good reasons and  
13 especially focuses on plaintiff's ability to work in Puerto  
14 Rico in a position where he was literally on his feet all  
15 day.

16 The need for a cane was discussed. Clearly, the  
17 cane was prescribed. The Administrative Law Judge explained  
18 at pages 43 and 44 his rejection of the need for a cane,  
19 noting that the cane did not appear in any of the treatment  
20 notes until after the initial rejection of his application of  
21 benefits, and that after that and after he retained counsel,  
22 he did appear at his medical appointments using a cane.  
23 Again, I think that that discussion is supported by  
24 substantial evidence.

25 I don't find any error in rejecting or assigning



1 little weight to Dr. Ganesh. The case law is clear that the  
2 residual functional capacity does not have to track any  
3 particular medical source opinion or statement. In this case  
4 Dr. Ganesh's opinions were accepted with respect to some  
5 limitations on walking and standing.

6 Dr. Triana's opinions were discussed at 44 and 45,  
7 as I indicated, but the Administrative Law Judge noted that  
8 treatment records relatively uniformly showed normal gait and  
9 there is only a shift when in January of 2015 plaintiff's  
10 claim was initially denied. It is for the Administrative Law  
11 Judge to weigh contradictory medical evidence under *Veino*,  
12 and the Court is not positioned to reweigh.

13 Turning to analysis of the subjective complaints,  
14 obviously that is addressed by SSR 16-3, what we used to call  
15 the credibility analysis. Among the factors to be considered  
16 when addressing the claims of subjective pain or other  
17 impairments are daily activities; location, duration,  
18 frequency, and intensity of pain or other symptoms; factors  
19 that precipitate and aggravate the symptoms; the type,  
20 dosage, effectiveness and side effects of any medication an  
21 individual takes or has taken to alleviate pain or other  
22 symptoms; treatment, other than medication, an individual  
23 receives or has received for relief of pain or other  
24 symptoms; any measures other than treatment an individual  
25 uses or has used to relieve pain or other symptoms; and any

1 other factors concerning an individual's functional  
2 limitations and restrictions due to pain or other symptoms.

3 In this case the Administrative Law Judge  
4 summarized plaintiff's claims at page 41 of the  
5 Administrative Transcript. He noted, and I agree, that the  
6 activities of daily living provide some support for rejection  
7 of plaintiff's claims. There is no evidence that a medical  
8 condition caused the plaintiff to leave his job in June of  
9 2014. And instead, it appears that it was the result of his  
10 decision to move out of Puerto Rico.

11 Again, it was noted that plaintiff was observed to  
12 have a normal gait at many of his exams. Plaintiff at one  
13 point stated that he wanted to work. The plaintiff's claims  
14 are not supported by Dr. Ganesh's opinions or the  
15 observations during her examination. They're partially  
16 unsupported by Dr. Lemely's use of the cane coming only after  
17 the initial denial of the application for benefits and the  
18 retention of counsel was a big factor in the determination by  
19 the Administrative Law Judge, as well as the exertional  
20 requirements of his past work, and the lack of evidence  
21 showing such serious deterioration that he would go from a  
22 position where he was required to lift 50 pounds frequently  
23 to not being able to even handle sedentary work.

24 The findings associated with the plaintiff's claims  
25 can only be overturned under *Brault* and its progeny if no

1 reasonable factfinder could conclude how as the  
2 Administrative Law Judge did, or put another way, would have  
3 to find that a reasonable factfinder would have to accept  
4 plaintiff's claims, and I do not find that that test is met.

5 Last argument is the step five determination.  
6 Obviously, it is the Commissioner's burden at step five to  
7 find the availability of significant work in the national  
8 economy that plaintiff is capable of performing  
9 notwithstanding his limitations. In this case, the  
10 Administrative Law Judge relied on Grid Rule 201.23. That  
11 rule applies to a younger individual age 18 to 44, which  
12 plaintiff is. It also specifies in terms of education  
13 illiterate or unable to communicate in English, and it  
14 relates to previous work experience being unskilled and  
15 directs a finding of no disability.

16 The text immediately preceding Table 1 indicates  
17 that, "The functional capability for a full range of  
18 sedentary work represents sufficient numbers of jobs to  
19 indicate substantial vocational scope for those individuals  
20 age 18 to 44 even if they are illiterate or unable to  
21 communicate in English." The inability to communicate in  
22 English is clearly an educational impairment and not a  
23 non-exertional impairment. *Sanchez versus Astrue*, 2010 WL  
24 11652386, from the Western District of Texas 2010. The  
25 ability to communicate is addressed in both 20 CFR Section

1 404.1564, as well as 20 CFR Section 416.964.

2 In this case the inability to communicate in  
3 English is not a non-exertional impairment that would require  
4 the testimony of a vocational expert. It is a condition that  
5 is specifically accounted for in the grids. Plaintiff has  
6 relied on a decision from one of my former colleagues in the  
7 Southern District of New York, Magistrate Judge Andrew J.  
8 Peck in *Cortes versus Colvin*, 2015 WL 2166111 from 2015. In  
9 that case, however, there was vocational expert testimony,  
10 but the vocational expert was not asked what effect  
11 illiteracy would have on the ability to perform three  
12 specific jobs identified which do require the ability to read  
13 and recognize meaning of at least 2,500 English words. In  
14 this case for other reasons there was not a requirement of a  
15 vocational expert and the grids were properly relied on.

16 There is also a claim that the postural limitations  
17 that should have been imposed would have precluded the  
18 ability to perform sedentary work. And as I previously  
19 indicated, under SSR 96-9p those postural limitations would  
20 have little effect on the ability to perform sedentary work.

21 In conclusion, I find that the standard under  
22 *Brault* was not met by the plaintiff in the challenge of the  
23 Administrative Law Judge's treatment of the treating source  
24 opinions and subjective complaints. I conclude that  
25 substantial evidence supports the determination and that

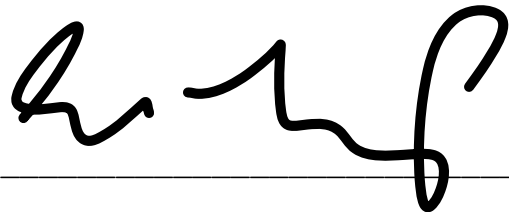
1 correct legal principles were applied and, therefore, will  
2 grant judgment on the pleadings to the defendant and order  
3 dismissal of plaintiff's complaint.

4 Thank you both for excellent presentations and I  
5 hope you stay safe in these interesting times.

6 \* \* \*

7  
8 C E R T I F I C A T I O N

9  
10 I, EILEEN MCDONOUGH, RPR, CRR, Federal Official  
11 Realtime Court Reporter, in and for the United States  
12 District Court for the Northern District of New York,  
13 do hereby certify that pursuant to Section 753, Title 28,  
14 United States Code, that the foregoing is a true and correct  
15 transcript of the stenographically reported proceedings held  
16 in the above-entitled matter and that the transcript page  
17 format is in conformance with the regulations of the  
18 Judicial Conference of the United States.

19  
20  
21  
22 

23 EILEEN MCDONOUGH, RPR, CRR  
24 Federal Official Court Reporter  
25